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Daily Composite Insurance, Banking, Construction & Government A Daily Bulletin listing Decisions of Superior Courts of Australia

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CIVIL (Insurance, Banking, Construction & Government)

Executive Summary (1 minute read)

Lazarus, Lazarus and Lazarus v Director of the Independent Commission Against Corruption (No 2) (NSWSC) - dismissal - delay - proceedings dismissed for want of due despatch (I B)

Barbon v Tessari (VSC) - Wills and estates - deceased knew and approved of Will - Will admitted to probate (B)

Ligon Sixty-Three Pty Ltd v ClarkeKann (No 2) (QSC) - costs - plaintiff to pay proposed defendants' costs of unsuccessful joinder application - defendant to pay plaintiff's costs of application to strike out relevant parts of defence (I)

Chiguvare v Seven Network (Operations) Ltd (ACTSC) - pleadings - defamation - defective pleadings - paragraphs of statement of claim struck out with leave to file amended statement of claim (I)

Summaries With Link (Five Minute Read)

Lazarus, Lazarus and Lazarus v Director of the Independent Commission Against Corruption (No 2) [2015] NSWSC 1390
Supreme Court of New South Wales

Bellew J

Dismissal - defendant sought that proceedings be dismissed pursuant to r12.7 *Uniform Civil Procedure Rules 2005* (NSW) for want of due despatch - delay - failure to comply with orders of Court to file amended statement of claim - s56 *Civil Procedure Act 2005* (NSW) - held: delay was catalyst for exercise of power under r12.7- delay should be assessed against entirety of circumstances of proceedings - plaintiffs' failure to comply with Court's most recent orders has resulted in delay sufficient to attract operation of r12.7 given proceedings' history - to allow proceedings to continue at odds with facilitation of just, quick and cheap resolution of issues - proceedings dismissed.

[Lazarus](#) (I B)

Barbon v Tessari [2015] VSC 490

Supreme Court of Victoria

McMillan J

Wills and estates - plaintiff sought grant of probate of deceased's Will - defendant objected to grant of probate on basis deceased did not know and approve of the contents of Will - defendant claimed deceased was not proficient in English, would not have understood technical language of Will and would not have known and approved of her Will - defendant claimed circumstances of making of Will excited suspicion that deceased was bullied or persuaded to sign Will that did not reflect her wishes - onus - deceased's proficiency in English language - whether solicitors who drew Will failed to act independently because they were also plaintiff's solicitors - held: Court satisfied deceased knew and approved of her Will - Will admitted to probate.

[Barbon](#) (B)

Ligon Sixty-Three Pty Ltd v ClarkeKann (No 2) [2015] QSC 274

Supreme Court of Queensland

P McMurdo J

Costs - Court refused plaintiffs' application for joinder of proposed defendants to proceedings, and struck out relevant parts of defence - plaintiff sought that defendant pay its costs of plaintiff's application to strike out relevant parts of defence - defendant did not resist such order - proposed defendants sought that plaintiff should pay their costs of application to join them on indemnity basis - plaintiff conceded it should pay costs but resisted payment of indemnity costs - proposed defendants had offered to compromise application by order that application be dismissed with no order as to costs - held: Court not persuaded plaintiff's rejection of offers so unreasonable as to warrant award of indemnity costs - plaintiff was able to make own assessment of merits of its joinder applications - Court not persuaded defendant should bear costs of the plaintiff's applications to join parties.

[Ligon](#) (I)

Chiguvare v Seven Network (Operations) Ltd [2015] ACTSC 285

Supreme Court of the Australian Capital Territory

Mossop AsJ

Pleadings - defamation - plaintiff alleged she was defamed by television broadcast - pleading alleged plaintiff was defamed by segment on "sham marriages" - defendant sought to strike out imputations in statement of claim on basis they disclosed no reasonable cause of action, were imprecise and embarrassing, or did not differ in substance - held: certain imputations did not make clear what plaintiff's complaints actually were - paragraphs of statement of claim struck out with leave to file amended statement of claim.

[Chiguvare \(I\)](#)

CRIMINAL

Executive Summary

Gal v R (NSWCCA) - criminal law - break and enter - error in sentencing process established but same or greater sentence would be imposed on re-exercise of discretion - leave to appeal granted - appeal dismissed

R v Martinez (QCA) - criminal law - offence against s328A(1) *Criminal Code* (Qld) - irregularity causing miscarriage of justice - conviction set aside - retrial ordered

Summaries With Link

Gal v R [2015] NSWCCA 242

Court of Criminal Appeal of New South Wales

Bathurst CJ; Price & Beech Jones JJ

Criminal law - applicant sentenced on two charges - first was that applicant did break, enter and steal from home contrary to s112(1) *Crimes Act 1900* (NSW) - second was that on same say applicant did break, enter and steal from residential premises in circumstances of aggravation contrary to s112(2) - applicant sentenced to total term of imprisonment of five years and six months and a non-parole period of three years - applicant sought leave to appeal from sentences on basis sentencing judge failed to address objective seriousness of offences or failed to give reasons stating what assessment was - ss9 & 21A(2)(j) *Crimes (Sentencing Procedure) Act 1999* (NSW) - s6(3) *Criminal Appeal Act 1912* (NSW) - held: error in sentencing process established - however on fresh exercise of the power to impose sentence Court considered that 'same sentence or a greater sentence is the appropriate - leave to appeal granted - appeal dismissed.

[Gal](#)

R v Martinez [2015] QCA 169

Court of Appeal of Queensland

Gotterson & Morrison JJA; McMeekin J

Criminal law - appellant convicted of offence against s328A(1) *Criminal Code* (Qld) in circumstances to which s328A(4) applied in that he dangerously operated vehicle on highway and caused death of another person - appellant sentenced to two years' imprisonment - appellant disqualified from holding or obtaining a driver's licence for three years from date of sentence - appellant appealed against conviction on ground a miscarriage of justice was occasioned by material irregularity in appellant's trial - common ground that irregularity had occurred in that trial judge had arranged for copy of transcript of trial to be given to jury and contrary to trial judge's expectation, the transcript had contained at least eight pages of transcript in which statements made by trial judge or counsel in jury's absence were transcribed - held: Court could not be satisfied that had irregularity not occurred, jury would have convicted appellant - irregularity caused a miscarriage of justice - s668E(1) of the *Criminal Code* required that appeal be allowed and conviction set aside - retrial ordered.

[Martinez](#)



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Voices of the Air

By Katherine Mansfield

But then there comes that moment rare
When, for no cause that I can find,
The little voices of the air
Sound above all the sea and wind.

The sea and wind do then obey
And sighing, sighing double notes
Of double basses, content to play
A droning chord for the little throats—

The little throats that sing and rise
Up into the light with lovely ease
And a kind of magical, sweet surprise
To hear and know themselves for these—

For these little voices: the bee, the fly,
The leaf that taps, the pod that breaks,
The breeze on the grass-tops bending by,
The shrill quick sound that the insect makes.

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